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8 UNITED STATES DISTRICT COURT

9 DISTRICT OF ARIZONA

10 In Re Bard IVC Filters Products
Liability Litigation

No. MD-15-02641-PHX-DGC

11 **AMENDED MOTION TO SEAL
AND NOTICE OF LODGING
DOCUMENTS RELATED TO
12 PLAINTIFFS' RESPONSES TO
13 DEFENDANTS' MOTIONS FOR
14 SUMMARY JUDGMENT**

15 **Amended Motion to Seal**

16 In accordance with Section 25 of the Stipulated Protective Order [Doc. 269],
17 Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6, Plaintiffs move
18 this Court for an Order sealing Plaintiffs' Responses to Defendants' Motions for Summary
19 Judgment in the bellwether cases ("Responses"), their controverting statements of facts
20 ("CSOFs"), and their Omnibus Statement of Facts ("OSOF") in support thereof.

21 Plaintiffs' Responses, CSOFs, and OSOF contain personal healthcare information
22 regarding the bellwether plaintiffs that is protected under HIPAA and confidential under
23 the Stipulated Protective Order, warranting protection from public disclosure.

24 Plaintiffs' personal healthcare information is protected under the Privacy Rule of
25 the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 45 C.F.R. §
26 160, 164(A) & (E), as well as several state-law privileges. The knowing disclosure of such
27 information is prohibited by 42 U.S.C. § 1320d-6. This Court has already granted the
28

1 filing under seal of the same (or similar) information when the parties submitted their
2 respective bellwether submissions. [See Doc. 4366.]

3 Each of the following documents contains such information (Plaintiffs have
4 separately filed redacted versions of these documents except as noted below):

5 Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment
6 as to Plaintiffs Lisa and Mark Hyde's Claims;

7 Plaintiffs' Controverting Statement of Facts in Opposition to Bard's Motion for
8 Partial Summary Judgment as to Plaintiffs Lisa and Mark Hyde's Claims;

9 Jones Plaintiffs' Response to Defendants' Motion for Partial Summary Judgment
10 on Plaintiffs Doris and Alfred Jones's Claims;

11 Plaintiffs' Controverting Statement of Facts to Defendants' Separate Statement of
12 Facts in Support of Motion for Summary Judgment as to Plaintiffs Doris And Alfred
13 Jones's Claims;

14 Plaintiff Carol Kruse's Memorandum in Opposition to Defendants' Motion and
15 Memorandum in Support of Motion for Summary Judgment as to Plaintiff Carol Kruse's
16 Claims;

17 Plaintiff Carol Kruse's Controverting Statement of Facts in Support of Her
18 Memorandum in Opposition to Defendants' Motion and Memorandum in Support of
19 Motion for Summary Judgment as to Plaintiff Carol Kruse's Claims;

20 Plaintiff Debra Mulkey's Opposition to Defendants' Motion for Summary
21 Judgment and Memorandum in Support;

22 Plaintiff's Controverting Statement of Facts in Opposition to Bard's Motion for
23 Summary Judgment as to Plaintiff Debra Mulkey's Claims; and

24 Plaintiffs' Omnibus Separate Statement of Facts in Support of Their Response to
25 Defendants' Motion for Summary Judgment in the Bellwether Cases.¹

26 ¹ Plaintiffs note that they seek to have sealed the portions of the OSOF that contain
27 plaintiffs' personal healthcare information. Such information is primarily set forth in the
28 facts beginning at paragraphs 150 of the document. The prior paragraphs contains facts
from documents, many of which Bard has designated as confidential. Because the

1 Many of the exhibits in support of the above documents also contain plaintiffs'
2 private healthcare information. Plaintiffs submit that the Exhibits identified in Exhibit A
3 are confidential and should be sealed by the Court. Plaintiffs and Defendants shall meet
4 and confer regarding the various exhibits to attempt to resolve confidentiality disputes.

5 Accordingly, Plaintiffs request that the Court order the information and documents
6 in Exhibit A lodged with Plaintiffs' Responses, CSOFs, OSOF and the corresponding
7 exhibits be sealed pending final determination of confidentiality.

8 **Amended Notice of Lodging**

9 Pursuant to LRCiv 5.6(d), Plaintiffs submit this Notice of Lodging Certain
10 Documents Under Seal Related to Plaintiffs' Oppositions to Defendants' Motions for
11 Summary Judgment.

12 Plaintiffs provide notice that, pursuant to LRCiv 5.6(d), they have lodged with the
13 Court under seal (with combined Motion to Seal and Notice of Lodging) their OSOF,
14 which contains factual statements based on the contents of many of the documents that
15 Defendants have claimed to be confidential and that are lodged with this Notice.

16 Resolution of those confidentiality issues will determine which parts of the OSOF
17 are appropriate for sealing and which statements may be filed without redaction.

18 Defendants contend the documents in Exhibit B are confidential and should be
19 filed under seal. As required under LRCiv 5.6(d), Plaintiffs certify that on October 2,
20 2017, the parties met and conferred in good faith and were unable to agree about whether
21 the documents are confidential under the Protective Order and should be filed under seal.

22 Plaintiffs do not believe that the disputed documents warrant continued
23 confidential treatment as proprietary or sensitive trade secret information.

24 This dispute notwithstanding, the parties have agreed to continue to meet and
25 confer on the documents at issue.

26
27 resolution of those confidentiality claims will determine what redactions will be made to
28 the OSOF, Plaintiffs have not filed a redacted OSOF and will file a properly redacted
version of the document once the confidentiality issues are resolved.

1 RESPECTFULLY SUBMITTED this 13th day of October, 2017.

2 GALLAGHER & KENNEDY, P.A.

3 By: /s/ Mark S. O'Connor

4 Mark S. O'Connor

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7 LOPEZ McHUGH LLP

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12 *Counsel for Plaintiffs*

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on this 13th day of October 2017, I electronically transmitted
15 the attached document to the Clerk's Office using the CM/ECF System for filing and
16 transmittal of a Notice of Electronic Filing.

17 /s/ Gay Mennuti

EXHIBIT A

Documents:

Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment as to Plaintiffs Lisa and Mark Hyde's Claims

Plaintiffs' Controverting Statement of Facts in Opposition to Bard's Motion for Partial Summary Judgment as to Plaintiffs Lisa and Mark Hyde's Claims

Jones Plaintiffs' Response to Defendants' Motion for Partial Summary Judgment on Plaintiffs Doris and Alfred Jones's Claims

Plaintiffs' Controverting Statement of Facts to Defendants' Separate Statement of Facts in Support of Motion for Summary Judgment as to Plaintiffs Doris And Alfred Jones's Claims

Plaintiff Carol Kruse's Memorandum in Opposition to Defendants' Motion and Memorandum in Support of Motion for Summary Judgment as to Plaintiff Carol Kruse's Claims

Plaintiff Carol Kruse's Controverting Statement of Facts in Support of Her Memorandum in Opposition to Defendants' Motion and Memorandum in Support of Motion for Summary Judgment as to Plaintiff Carol Kruse's Claims

Plaintiff Debra Mulkey's Opposition to Defendants' Motion for Summary Judgment and Memorandum in Support

Plaintiff's Controverting Statement of Facts in Opposition to Bard's Motion for Summary Judgment as to Plaintiff Debra Mulkey's Claims

Plaintiffs' Omnibus Separate Statement of Facts in Support of Their Response to Defendants' Motion for Summary Judgment in the Bellwether Cases

Exhibits to Case-Specific OSOF – Plaintiff Lisa Hyde

Exhibit H-A Hyde Medical Records

Exhibit H-B Dr. Henry Deposition Transcript (April 6, 2007)

Exhibit H-C Lisa Hyde Deposition Transcript (Jan. 25, 2017)

Exhibit H-D Lisa Hyde Fact Sheet

Exhibit H-E Dr. Kuo Deposition Transcript (March 23, 2017)

Exhibit H-F Dr. McMeeking Deposition Transcript (July 6, 2017)

Exhibits to Case-Specific OSOF – Plaintiff Doris Jones

Exhibit J-A Jones Medical Records

Exhibit J-B Dr. Avino Deposition Transcript (March 23, 2017)

1 **Exhibit J-C** Jones Consent Form

2 **Exhibit J-I** Dr. Chodos Deposition Transcript (Aug. 5, 2017)

3 **Exhibit J-J** Dr. Nelson Deposition Transcript (March 23, 2017)

4 **Exhibit J-Q** Dr. Moritz Deposition Transcript (July 18, 2017)

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6 **Exhibits to Case-Specific OSOF – Plaintiff Debra Mulkey**

7 **Exhibit M-A** Mulkey medical expenses detailed bill

8 **Exhibit M-C** Dr. Tompkins Deposition Transcript (April 11, 2017)

9 **Exhibit M-D** Mulkey Deposition Transcript (Feb. 8, 2017)

10 **Exhibit M-E** Mulkey Fact Sheet

11 **Exhibit M-I** Dr. Moritz Deposition Transcript (July 18, 2017)

EXHIBIT B**Exhibits to OSOF:**

Para. No. / Exhibit No.	Description
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5	Chart of Filter Fracture Complaints, BPVEFILTER-01-00037664
7	Deposition of Christine Brauer dated Aug. 2, 2017
8	Simon Nitinol Filter/Straight Line Technical File BPVE-01-00066044-109
9	Product Opportunity Appraisal for Recovery Filter System dated Mar. 28, 2003, BPV-17-01-00030247
10	NMT presentation dated June 14, 2000, BPVE-01-00001342
13	Email from George Cavagnaro to Doug Uelmen and Carol Vierling, April 18, 2002, BPV-17-01-00052621
14	Letter from K. Fuller and C. Vierling to Food and Drug Administration, dated July 10, 2002, BPV-17-01-00057953
15	Recovery Filter System Special 510(k) Submission, July 10, 2002, BPV-TRIAL-EXHIBIT-0293
16	Department of Health & Human Services letter, date Nov. 27, 2002, BPV-17-01-00057709
17	Letter from M. Edwards to Food and Drug Administration dated Apr. 25, 2003, BPV-17-01-00054947
18	Recovery Filter System Special 510(k) Submission (K022236), Nov. 27, 2002, BPV-17-01-00057953
19	R&D Technical Report dated Aug. 5, 1999, BPV-17-01-00002650
21	Deposition of Len DeCant dated May 24, 2016
24	Deposition of David A. Kessler, M.D. dated Oct. 5, 2016
25	Department of Health & Human Services letter dated July 25, 2003, BPV-17-01-00058122
26	Failure Investigations/R002 History Review, BPVEFILTER-01-00003802
29	Email from Mary Edwards to misc. Bard employees dated February 13, 2004, BPV-17-00164702
34	Deposition of Natalie Wong dated Oct. 18, 2016
36	Email from Uemen to Palermo dated June 11, 2004, BPV-17-01-00153581-88
44	Email from John McDermott to Len DeCant dated May 13, 2004, BPVE-01-00036095

1 45 Email from Natalie Wong to Doug Uelemen dated May 20, 2004, BPV-
2 01-00511127

3 48 Email from John McDermott to Len DeCant dated July 26, 2004, BPV-
4 DEP-00014246

5 52 Remedial Action Plan dated Sept. 2, 2004, BPVE-01-00034860887

6 53 Remedial Action Plan dated January 4, 2005, BPVE-01-01019773-825

7 58 Recovery Filter PowerPoint presentation, August 26, 2004, BPVE-01-
8 00009466-85

9 60 Failure Investigations/R002 History Review, BPVEFILTER-01-
10 00003802-

11 61 Traditional 510(k) G2 Filter with Femoral Delivery,
12 FDA_PRODUCTION_00000048-49

13 62 GIA Recovery Filter Femoral System Design Verification and Validation
14 Report, BPV-17-01-00001134-153, 146

15 63 G2 Filter System Instructions for Use, BPV-17-01-00137389-92

16 64 G2 Filter System, Patient & Answers, BPV-17-01-00137624-32

17 65 Marketing brochure for G2 Filter System for Permanent Placement, BPV-
18 17-01-00142912

19 67 2005 G2 Filter-FAQs, BPV-17-01-00062020

20 69 Letter from FDA to Bard Peripheral Vascular, August 29, 2005,
21 FDA_PRODUCTION_00000055

22 71 2004 Recovery Filter System Dear Doctor Letter, BPVE-01-00303515

23 72 Email chain between Micky Graves and Charlie Simpson, March 23,
24 2006, BPVE-01-01225832

25 75 Meridian Vena Cava Filter and Jugular Delivery System Product
26 Performance, BPV-17-01-00148748

27 77 Health Hazard Evaluation, Feb. 15, 2006, BPVEFILTER-01-00008355-
28 57, at 55, 57

78 Caudal Migration Test Method Development and G2 Filter Resistance
Test Report, BPVE-01-007895432

79 G2 and G2 X Fracture Analysis, November 30, 2008, BPVE-01-01239757

80 Memo from Natalie Wong re G2 Pre-Product Assessment Team Minutes-
Caudal Migration, April 28, 2006, BPVE-01-00717924-25

81 G2 Caudal Migration report, March 2, 2006, BPVE-01-00720835

84 Deposition of Jack Sullivan (Vol. II) dated Nov. 3, 2016

86 Medical Monitoring Adjudication Meeting Minutes, August 28, 2006, BBA-00012802
 87 Medical Monitoring Adjudication Meeting Minutes, October 26, 2006, BBA-00013699-715
 89 Ex. 534 to Chris Ganser Deposition, Bard PowerPoint presentation regarding EVEREST and MAUDE data dated Oct. 11, 2016
 90 G2 Platinum Presentation, dated June 2008, BPVE-01-00624026
 95 Bard Idea POA Eclipse Anchor Filter, BPVE-01-02077858
 96 Deposition of Daniel Orms dated Aug. 16, 2016
 98 Deposition of Michael Randall dated Feb. 2, 201
 99 Email from Filter Marketing to Bill Little, Apr. 27, 2010, BPVE-01-00580608
 100 Ex. 2087 to Mike Randall Deposition, dated Oct. 11, 2016, at BPV-17-01-00145695
 100 Filter Fracture Analysis, August 2010, BPV-17-01-00170378
 101 Vail Vena Cava Filter Concept POA, Oct. 14, 2009, BPV-17-01-00145692
 104 Eclipse Vena Cava Filter Performance Specifications, BPV-17-01-00108342
 105 First Supplemental Expert Report of David A. Kessler, M.D. (Mar. 3, 2017)
 106 Design History File Index for the Eclipse, BPV-17-01-00108342 - See Ex. 104
 107 Ex. 4070 at BPVEFILTER-01-00001631-32 (Patient Questions & Answers Brochure for the Eclipse)
 108 SNF Postmarket Surveillance Study Amendment: 522 Response, 2015, BPVEFILTER-01-00356101
 109 Deposition of Christopher Ganser, dated Oct. 11, 2016
 112 Filter Fracture Analysis, May 2016, BPVEFILTER-01-00303182-89
 114 Deposition of Robert Cortelezzi dated Nov. 11, 2016
 115 Health Hazard Evaluation, dated Nov. 7, 2004, BPV-17-01-00103875
 120 Letter from FDA to Bard re marketing of G2 Filter, K050558
 121 Email from J. Greer to J. Hudnall dated 7/22/2005, BPVE-01-001797300
 H-K Deposition of Kay Fuller dated January 11, 2016

1	J-E	Eclipse Vena Cava Filter, Femoral Vein Approach, Instructions for Use,
2		BPV-17-01-00142881
3	J-K	Expert Report of Robert McMeeking dated June 9, 2017
4	J-L	Expert Report of Darren R. Hurst, M.D. dated June 5, 2017
5	J-M	Expert Report of Derek D. Muehrcke, M.D. dated June 5, 2017
6	M-B	Expert Report of Darren R. Hurst, M.D. dated June 5, 2017
7	M-C	Deposition of Roderick Tompkins, M.D. dated April 11, 2017
8	M-H	Expert Report of Derek D. Muehrcke, M.D. dated June 5, 2017
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